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1 upon emergence, or in the alternative payment for
2 staying in your position after the plan of
3 reorganization has been filed, out of the ordinary?

4 A. It's simply a different design.

5 Q. You mentioned retention. And if we can
6 just talk generally about retention bonuses, I
7 think you had said earlier when Ken corrected me
8 and we were confusing emergence and retention
9 bonuses, let's make sure we understand we're on the
10 same page as to what you believe a retention bonus
11 is. So if you can tell me what your understanding
12 is of a retention bonus.

13 A. A retention bonus is typically a fixed
14 payment made to employees of a troubled or Chapter
15 11 company that provides for a payment on specified
16 dates if the employees are working on those dates.

17 Q. What considerations do you take into
18 account in determining the appropriateness of --
19 let's first talk about having a retention bonus
20 program in place.

21 A. The purpose of a retention bonus program
22 is to preserve the debtor's estate. The theory is

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48

1 that there are a lot of distractions that result
2 when a company goes into Chapter 11 and many
3 employees are tempted, either through headhunters
4 or because of a belief -- I should say a doubt --
5 about the company's future, to seek other
6 opportunities.

7 The retention bonus serves to keep those
8 individuals from pursuing other potential
9 opportunities and to focus on the task at hand,
10 which could vary from simply doing their job to
11 trying to get the debtor through the Chapter 11
12 process.

13 Q. Okay. I think you said that it's for
14 when a company goes into a Chapter 11. Are there
15 different considerations for a retention program
16 after a company has been in Chapter 11 for quite
17 some time?

18 A. There may be.

19 Q. And what would those be?

20 A. Sometimes retention bonuses are used to
21 restore competitive compensation levels. Employees
22 may not have been paid any incentive opportunity in

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49

1 one, two or three years preceding the debtor's
2 filing for bankruptcy. If during the course of the
3 bankruptcy compensation levels are otherwise
4 restored it may be that a retention bonus is not
5 necessary for a broad group of employees.

6 Q. Would you also -- I'm sorry.

7 A. I was going to say, additionally
8 retention bonuses are designed to obviously
9 minimize or prevent turnover. If there hasn't been
10 a lot of turnover there may be a diminished need
11 for retention bonuses.

12 Q. You had said to restore competitive
13 comp. Would that also take into account loss of
14 equity in the company stock ownership?

15 A. In certain situations it might. Yes.

16 Q. In paragraph 12 of your affidavit you're
17 discussing the competitive practice for special
18 retention bonuses for CEOs similar to the Chapter
19 11 emergence bonus. I just want to ask you about
20 that particular sentence, because I thought I heard
21 you to say that you haven't seen a situation where
22 there has been a bonus to a CEO or other high

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1 or her stock option and receive cash. That option,
2 though, would only have value in the company as a
3 practical matter performed well financially. In —
4 that sense movement to a cash-based plan and away
5 from equity-based arrangements is fundamental no
6 different. The only way the cash will be paid
7 under the cash long term incentive program is if
8 the company performs well financially.

9 Q. What you said reminded me of an earlier
10 discussion, that one of the reasons for a retention
11 bonus is to reward or make up lost compensation
12 that may have been equity-based prior to
13 bankruptcy. Is that correct?

14 A. I said that is sometimes a
15 consideration, yes.

16 Q. Mr. Festa here doesn't fall into that
17 consideration; he didn't have any equity in the
18 debtor's pre-petition that he would have lost as a
19 result of the bankruptcy; is that correct?

20 A. That statement is technically correct.

21 Q. So your view at this point is that it's
22 not simply a retention bonus; it's still a hybrid;

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1 it's a retention and emergence bonus? Those dual
2 purposes still exist?

3 A. Yes.

4 Q. Is it typical for a CEO to receive a
5 retention bonus or emergence bonus if he's no
6 longer employed?

7 A. No.

8 Q. Okay. Is it your understanding that in
9 Mr. Festa's agreement he's entitled to that bonus
10 if he's no longer employed under certain
11 circumstances?

12 A. Yes.

13 Q. And that's atypical?

14 A. I interpreted your first question along
15 these lines to simply mean if the CEO voluntarily
16 quits would he or she be entitled to the retention
17 bonus. And the answer to that question is no.

18 Q. Okay.

19 A. If there is constructive termination or
20 an involuntary termination, then payment of the
21 retention bonus would be consistent with
22 competitive practice.

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